IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.581 OF 2007

Fazal Ahmed Noorul Haque Ansari. ..Petitioner.

V/s.

Orbit Exports Ltd. ..Respondent.

Mr.F.A.Ansari for Petitioner.

Mr.Rahul Narichania with Mr.Halai i/b. Halai & Co. for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 5, 2007.

P.C. :

1. Having gone through the pleadings and documents on record with the assistance of the Counsel for the parties, in my opinion, this is not a case, which deserves to be admitted. This is so because, the Petitioner has approached this Court on the assertion that he had supplied goods from time to time to the Respondent-company as per their Order under different invoices, which are exhibited as Exh.A-1 to A-21. According to the Petitioner, the aggregate outstanding amount payable under the said invoices for goods supplied from time to time works out to Rs.66,72,923/-only. It is the case of the Petitioner that inspite of repeated demand, the amount remained unpaid. It is on this assertion, the

Petitioner has approached this Court.

2. The Respondent on entering appearance has filed reply affidavit disputing the claim of the Petitioner. According to the Respondent, the Respondent has been making payment from time to time, as can be discerned from the chart appended in the compilation at pages 1 to 3 thereof. According to the Respondent, the entire amount towards the value of goods supplied has already been paid, as can be seen from the payments referred to in the said chart. The Respondent claims that the Respondent has made excess payment, which position is however disputed by the Petitioner. The Respondent has relied on three cheques issued by the Petitioner in favour of the Respondent, which according to the Respondent, is to acknowledge the liability of the Petitioner to make good the amount towards defective goods, as agreed between the parties. The three cheques are valued at Rs.7 Lakhs. The Petitioner however, submits that three blank cheques were taken from the Petitioner towards security; and have been misused by the Respondent under guise of recovering the amount towards defective goods.

3. The Petitioner is seriously disputing that

the goods supplied were defective in any manner. According to the Petitioner, no such grievance was made by the Respondent until filing of this Petition.

4. Suffice it to observe that controversy brought before this Court and the stand taken on behalf of both the sides raise triable issues. Besides, it is not a case, as if the defence taken by the Respondent is unsubstantiated. There is plausible explanation given by the Respondent, atleast for consideration of present Petition. It is not open for this Court to enter into controversy raised by the parties and to record positive finding on the question of fact, one way or the other, which issues will have to be adjudicated by the Court of competent jurisdiction.

5. In the circumstances, this Petition is rejected. It will be open to the Petitioner to pursue his claim by way of appropriate proceeding, as may be advised, which will have to be considered and decided on its own merits in accordance with the law.

(A.M.KHANWILKAR,J)